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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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08/428,918 04/25/95 REAVER

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PM92/0508

SCOTT W KELLEY
KELLY BAUERSFELD AND LOWRY
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS CA 91367

EXAMINER

ROWAN, K

ART UNIT

PAPER NUMBER

3643

DATE MAILED:

05/08/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/428,918

Applicant(s)
REAVES et al.

Examiner
Kurt Rowan

Group Art Unit
3643



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-19 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-19 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Reissue Applications

1. The reissue oath/declaration filed with this application is defective because the error which is relied upon to support the reissue application is not an error upon which a reissue can be based. See 37 CFR 1.175(a)(1) and MPEP § 1414. Applicant argues that the original patent is partly inoperative they claimed less than we had a right to claim. The declaration states that to the point of filing the present reissue application ten different types of fly swatters and insect traps had been designed. However, the declaration does not state when these prototypes had been designed other than prior to the filing date of the reissue application. The statement that none of the claims read literally on the new prototype is not an error in the original patent. All of the prototypes could have been designed after the issuance of U.S. 5,207,018. In particular, there is no evidence that the ninth prototype was designed within the constraints of the original patent since the mesh closure has been omitted and this was integral to the original patent since the mesh is shown in all of the Figs. and is the only closure member recited such as on page 4, line 41.
2. Claims 1-19 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7, 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebling in view of Chapman.

The patents to Liebling and Chapman show traps with handles. Liebling shows a handle 7, a housing 2 attached to the front end of the handle and having a large aperture. It is not clear if the housing is rigid or not since as shown in Fig. 3, the housing does not appear to hold its own shape and thus would not be rigid. Liebling shows a track means 11 and a planar closure member 10. Chapman shows a fly destroyer with a rigid housing 12 including an upper wall and side walls at 13. In reference to claims 1, 9, it would have been obvious to provide Liebling with a rigid housing as shown by Chapman since merely substitution of one housing for another is contemplated. In reference to claim 2, Liebling does not show a rectangular cross-sectional configuration. Liebling shows a circular wire with two strands being the handle. However, the configuration of the handle is a matter of design choice to be determined through routine experimentation since the function is the same and no showing of unexpected results was made. In reference to claim 3, Liebling shows two parallel channels 11 that define two sides of the compartment aperture with the channels arranged to support the front portion of the closure member throughout its range of motion. In reference to claims 4-5, Liebling shows a front channel 11 that acts as a housing bumper means for enclosing a front of the track to limit the movement of the closure member. In reference to claim 7, Liebling shows a transparent member with a plurality of small apertures. In reference to claim 10, Chapman shows a housing with an upper wall and interconnected side walls extending downwardly to define a compartment 13.

Allowable Subject Matter

5. Claims 14-19 are allowable over the art of record and would be considered allowable if the rejection under 35 USC 251 of a defective reissue oath is overcome.

6. Claims 6, 8, 11-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and assuming that the rejection under 35 USC 251 of a defective reissue oath is overcome.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


KURT ROWAN

PRIMARY EXAMINER

ART UNIT 3643

May 1, 2000